

CAP Nondiscrimination Policy

The purpose of this lesson is for students to comprehend CAP's Nondiscrimination policy.

Desired Learning Outcomes

1. State the history of CAP's Nondiscrimination Policy.
2. Discuss important terminology and concepts.
3. Explain CAP's Nondiscrimination Policy.
4. Identify behavior contrary to the CAP Nondiscrimination Policy.

Scheduled Lesson Time: 30 minutes

Introduction

From its inception, Civil Air Patrol has dedicated itself to service - to its country, and its fellow man. When called upon, it responds quickly, professionally, and with compassion. It does not see the color of the skin of those who it helps or who seek to serve with CAP, it does not ask the background, it does not care from where they come. These things don't matter.

CAP believes that strength comes from diversity. If you have already taken the lesson on diversity, you know that promoting a corporate culture that is open and accepting of people from diverse backgrounds and circumstances is key to effective leadership; and in fact is a manifestation of CAP's Core Values of Integrity, Excellence, Volunteer Service, and Respect.

The issue to which nondiscrimination is tied (creating a culture of inclusion and appreciation for the skills and experiences of members) can be likened to a coin, with diversity and its relationship to leadership being one side. The other side is the policy side and its relationship with current federal law and accompanying directives. This lesson will explore the policy side.

1. State the history of CAP's Nondiscrimination Policy

PERTINENT LAWS

In 1964, the Congress of the United States passed, and the President signed, the Civil Rights Act. This law, which has been amended on a number of occasions, was the first of a series of laws enacted to ensure that employees and beneficiaries of federally funded programs are treated fairly; that they are not denied opportunities based upon

their membership in a protected class (group). The Civil Rights Act defines a protected class as one based on race, color, or national origin.

Most people are familiar with the idea, if not the specifics of, Title VII of the Civil Rights Act, which covers workplace discrimination and harassment. Title VI of the Act covers volunteer organizations which receive federal financial assistance. Though the volunteer-side of Civil Air Patrol is not a workplace, it is an organization which receives federal financial assistance.

Title III of the Age Discrimination Act of 1975 prohibits discrimination based on age. As an organization receiving federal monies, CAP is covered under this Act.

The Americans with Disabilities Act (ADA) of 1990 is a wide-ranging law that prohibits, under certain circumstances, discrimination based on disability. It affords similar protections against Americans with disabilities as those guaranteed by the Civil Rights Act of 1964.

DoD AND AIR FORCE DIRECTIVES

Speaking broadly, directives and regulations issued by government agencies have the force of law. This means that compliance with a directive or regulation (called an Instruction by the USAF) is mandatory, and that noncompliance can trigger action by the issuing agency. There are several directives and instructions from DoD and the United States Air Force (USAF) concerning nondiscrimination that affect Civil Air Patrol.

Shortly after the Civil Rights Act was passed, the Department of Defense (DoD) issued a directive mandating the implementation of the Act's principles within the Defense Department. While many types/classes of organizations and agencies were covered by this directive, Civil Air Patrol was mentioned by name. Shortly thereafter, the Air Force issued a regulation to implement the DoD directive within Air Force programs. Once again, Civil Air Patrol was mentioned specifically.

Today, there are two DoD Directives that deal with Nondiscrimination in organizations like CAP. DoDD 5500.11 deals with the provisions of the Civil Rights Act of 1964 (as amended). DoDD 1020.1 addresses the provisions in the Americans with Disabilities Act (ADA). Air Force Instruction (AFI) 36-2707 addresses implementation of both DoD Directives within Air Force programs. A CAP directive on Nondiscrimination has existed for almost as long as the Air Force's and DoD's directives, and Article VII of CAP's Constitution states that "Discrimination based on race, sex, age, color, religion, national origin, or disability is prohibited."

EVOLUTION OF POLICY

For over 30 years, Air Force and CAP leaders interpreted the language in the laws and DoD directives to mean that it was the Air Force's responsibility to address allegations of discrimination emanating from CAP. That is why CAPR 39-1 (not to be confused with the CAP uniform manual, which is CAP M 39-1) called for all discrimination allegations to be sent to Personnel at National Headquarters, who forwarded them to

the CAP-USAF staff judge advocate (CAP-USAF/JA) for investigation. However, a review by the Secretary of the Air Force General Counsel's office (SAF/GC) in 2002 determined that it was not the Air Force's job to handle discrimination allegations. The Air Force's task was only to be sure that CAP programs met the mandates of those directives. A single, full-time employee was initially appointed to be the CAP Equal Opportunity Officer (EOO) for both volunteers and employees in May 2002. This was when CAP first issued CAP Regulation 36-2, *Civil Air Patrol Nondiscrimination Program*, to address violations of the Nondiscrimination Policy. In 2006, CAP's leadership elected to have volunteer discrimination issues handled by a volunteer with the title of CAP Equal Opportunity Officer. The person assigned to this job changes from time to time. To find out who currently is assigned to the duty you can find it in the CAP and CAP-USAF Key Personnel Directory available in e-Services.

2. Discuss important terminology and concepts.

Discrimination refers to making a distinction for or against a person or thing; making a choice.

The truth is we all discriminate; we all make choices. One person prefers skim milk over 2%. Another person is a "GM man" and won't allow a Ford to be parked in his driveway. Employers discriminate by requiring specific educational levels and skill sets. They do this to cull the potential pool of applicants for an open position so that they can make the best choice for the company. Some customers won't buy from anyone on E-Bay who has below a 98% positive seller rating.

Discrimination, in the broadest sense is healthy. Most of the time, it signals thought, knowledge of the issues at hand, and a willingness to make a decision. Discrimination is not healthy when it is used to exclude people because of the color of their skin, the fact that they may be missing a limb, have an accent, or have different religious beliefs, or no religious beliefs.

Before discussing CAP's Nondiscrimination policy, it's important to discuss some concepts and terminology concerning the issues of discrimination and harassment. This will help you as you work with the scenarios later in the lesson.

IMPORTANT TERMS

Terms such as "racial profiling," "color," "ethnic background," and "religion," are often used in the public discourse. But when used in the context of the CAP Nondiscrimination policy, they have distinct definitions.

- **Race** is a group of persons related by a common descent or heredity.
- **Color** refers to the complexion of the skin. People may have the same color of skin, but may be from a different race.
- **Ethnicity** refers to people who share a common culture and sometimes physical or racial characteristics.

- **National origin** refers to the country in which a person was born.
- **Sex (Gender)** refers to the male and female division of the human species.
- **Religion** refers to a set of spiritual beliefs or a set of beliefs relating to the cause, nature, or purpose of the universe.
- **Disability** refers to a lack of competent power, strength, or physical or mental ability. May be naturally occurring or the result of an accident or other event.
- **Racial or ethnic profiling** commonly refers to the practice of taking an action (positive or negative) based on the perception of what a person represents because of their race or ethnicity. For instance, a police officer pulling over a person of color because the neighborhood they happen to be driving through has few people of color is racial profiling. Another example would be assigning people of a certain ethnic group to tasks because they are perceived to be better at the task is racial profiling. Speaking more broadly, profiling could also be as simple as saying that all people of a (pick a protected class) for instance, are smart, or play sports well, or cook well, etc. Profiling is contrary to the Nondiscrimination policy.

EXERCISE

To me, racial or ethnic profiling means

CONCEPTS TO CONSIDER

Personal discrimination are actions taken by an individual to deprive a person or group of a right because of race, sex, age, color, religion, national origin, or disability. No one wants to think, in Civil Air Patrol, a person is discriminated against for any of these reasons. But sometimes they are. It is our duty, as good leaders, to be vigilant and watch for these biases and correct them.

For example, providing less support or on-the-job training to individuals of a particular group sets them up for failure by limiting their ability to progress in training. It is a disservice to squadron members not to inform them of important training. When they discover (and they will) CAP training was offered and it was denied them because they are in a protected class, they will be angry, disappointed and may leave CAP. That is everyone's loss. They may also file complaints, contact elected officials, or air their grievances in the media. Any of these actions would negate the efforts of many members who have worked so hard to improve CAP's image in the eyes of the public.

Another example of personal discrimination is placing a targeted group member in a job that does not provide progression recognition or an increased level of responsibility.

Again, holding a person back in their progression in CAP is discrimination. Everyone should be given the opportunity to train and progress in areas of interest to them. To deny a person those opportunities is a signal of disrespect and prejudice.

QUESTION

Have you ever seen or have been the target of personal discrimination? How did it make you feel?

Systemic discrimination are actions by an organization that, through its policies or procedures, deprives a person or group of a right because of race, sex, age, color, religion, national origin, or disability, whether intentional or not.

One example of systemic discrimination is creating a job description that unfairly or unjustly eliminates certain individuals from a position or assignment. These positions may or may not be outlined in CAPR 20-1, and can also include assignments such as pilots, ground team leaders, incident commanders or branch directors, etc. To deny a person that job or to intentionally make that job more difficult than it needs to be could be considered discrimination.

That said, there are exceptions. In the Cadet Program, physical fitness standards are differentiated for males and females. The question may be asked: "Is having a lower fitness standard for females discriminatory?" The correct answer is no, it is not. It is recognized in the medical arena that females have different physical tolerances. Our female cadets are measured by those tolerances rather than a blanket "Everybody does the same PT." By creating a different standard, females were given an equal opportunity to pass the PT test and be promoted.

Sexual harassment in the traditional workplace is considered discrimination. It does not specifically say that in the Civil Rights Act. A legal action brought by a citizen allowed the courts to interpret that the sexual (gender) protections of the Act included Sexual Harassment. The courts said that Sexual Harassment in the workplace could make it impossible for a victim to do the work they are being paid for and that could, in turn, deprive the victim of a means to feed, clothe and house his or her family.

However, Sexual Harassment does not fall into the category of discrimination in a voluntary environment such as Civil Air Patrol. This is because CAP membership is a personal choice and such actions between CAP members do not deprive anyone of a livelihood. This should not be misinterpreted. Sexual Harassment is a violation of CAP policies and directives, and CAP does not condone it. If a member is a victim of, or becomes aware of, acts of Sexual Harassment, they have the right and obligation to

file a complaint under the CAP Complaints program described in CAPR 123-2, *Complaints*.

That said, we will discuss Sexual Harassment at this point in our training because of its importance.

Sexual Harassment involves unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a physical nature. Today, the subject of sexual harassment is a hot-button topic in every human resource office in the country. Civil Air Patrol is no different. Sexual Harassment applies to both males and females. No one can be made to tolerate such conduct that is made either explicitly or implicitly a term or condition of a person's job, promotion or participation in Civil Air Patrol.

Some examples of conduct considered to be Sexual Harassment in nature include:

- Verbal--Pressure for dates with harsh sexual messages
- Non-Verbal--Leering, ogling, cartoons, notes
- Physical--Touches or brushes, hugging or patting, or other unwanted touching

Why must a leader in CAP be concerned with Sexual Harassment in their organization?

First, it is a matter of applying the core values. Secondly, you have an obligation to follow CAP policy. Third, you may have legal liability. Finally, failure to do so could result in:

- Creating a hostile environment.
- Creating an intimidating and offensive environment.
- Negatively impacting productivity and/or mission accomplishment.
- Negatively affecting the well being and personal security of our members.

Sexual Harassment will not be tolerated and leaders in CAP are the "front line" to prevent this harassment. Always talk with your Commander or person of authority at an activity if you witness this behavior. If the Commander or person of authority is the problem, take it up the chain of command.

In CAP, reasonable accommodation is any modification or adjustment to a job that will enable a qualified member with a disability to participate in activities or perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified member with a disability has rights and privileges equal to those members without disabilities.

The "reasonable" part of reasonable accommodation means that the expense or effort involved in the accommodation does not inflict an undue burden on the organization. It also means that accommodating the member with a disability does not endanger the safety of the member, other members, or endanger equipment/resources of the organization. For example:

A member confined to a wheelchair wishes to be a mission communications director. The member is a licensed HAM radio operator with many years of experience in managing radio communications operations. Building a ramp so this member can get in and out of a communications facility is likely a reasonable accommodation.

A member confined to a wheelchair wishes to be a mission scanner. The member has completed the ground portion of scanner training and has the visual and verbal skills required. However, the member cannot move without a wheelchair and the wheelchair will not fit in the cargo area of the aircraft. Since others would have to help this member in and out of the aircraft during an emergency, and this member would inhibit the ability of others to get out of the aircraft during an emergency, allowing this member to qualify as a scanner would likely not be a reasonable accommodation.

Remember that these examples above are used to illustrate the concept of reasonable accommodation. Each case must be evaluated on its own merits, and it's always a good idea to contact the CAP Equal Opportunity Officer or the CAP Equal Opportunity Administrator at NHQ with questions.

3. Explain CAP's Nondiscrimination Policy

"It is Civil Air Patrol policy that no member shall be excluded from participation in, denied the benefits of, or subjected to discrimination in any CAP program or activity on the basis of race, sex, age, color, religion, national origin, or disability (formerly handicap). It is Civil Air Patrol policy that no applicant meeting CAP's minimum age requirement will be denied membership in CAP on the basis of race, sex, age, color, religion, national origin, or disability (formerly handicap)." - CAPR 36-1, paragraph 2

It's pretty simple in concept. Anyone who meets CAP's eligibility requirements should be allowed the opportunity to join. Does this mean you have to accept everyone who walks in the door to your meeting? No, there are many good reasons not to allow someone to join the unit. This is why having a membership committee is so important. It means that they should not be excluded because they might come from a protected class. If you find yourself saying to a prospective member for instance, "I don't think you'd be comfortable here," the reason had better not be because they're "different." At its core, it's about *Integrity* and *Respect*.

Let's talk a little more about reasonable accommodation, as it regards to CAP's Nondiscrimination Policy. Reasonable accommodation is about providing members with physical or medical issues the opportunity to succeed.

Let's consider some examples in which as the wing commander, you may find yourself involved as a decision maker or as a mediator:

- *Let's say that the wing planning a wing conference. Two weeks before the event, a member has told the project officer that because of a medical condition they cannot eat the entrée which is planned for the banquet, yet they want to go to the banquet. They say they can eat a vegetarian entrée. A reasonable*

accommodation would be to work with the caterer to get the member the entrée they can digest. In fact, nearly all caterers will be happy to make a special meal, given enough time (normally a few days).

- *The wing is planning to hold its summer encampment in two weeks. A squadron commander contacts you and says one of their cadets who was planning to go has recently broken her leg. They say she can get around on crutches, but may need help carrying their books, and would need a ground-floor room. The squadron commander says that the encampment commander has told him the cadet cannot attend.* Somewhat more difficult because of the time constraints, but potentially solvable. In discussing the problem with the encampment commander, perhaps he can ask the other students to rotate helping the member, perhaps driving them to meals and carrying their books. If you can get a ground-floor room, fine, but if not and the lodging facility has an elevator, additional assistance may be offered to the cadet to the student to ensure her safety. Normally, lodging facilities will switch rooms around to get the student a ground-floor. On the other hand, physical fitness and drill are parts of the encampment curriculum. Will she miss too much? It's not easy.
- *The Director of Operations for the Wing comes to you with a problem. A squadron commander called with a question. A 10-year member has recently returned to meetings after having been paralyzed from the waist-down in a vehicle accident. Before the accident he was a mission observer, and frankly, the best in the wing. He wants to re-qualify and fly as a mission observer again. His ability to do the tasks of the mission observer is unaffected. The squadron commander wants to know what to do.* In this case, the situation is more complex. The driving factor in this case is not the ability of the member to perform the task, but the safety of the member and the rest of the aircrew in the event of an emergency. If the aircrew had to evacuate the aircraft in an emergency, would they all be able to get out safely? If the wheelchair could not be stowed and they had to put down in an unfamiliar area, could the aircrew get the member to shelter? Is the member asking the unit and wing to do something which is beyond their capability? Yourself, the Director of Operations and the squadron commander would be wise to work with the CAP Equal Opportunity Officer or the CAP Equal Opportunity Administrator to present a solution that could allow the member to participate in ES without jeopardizing safety.

Reasonable accommodation means that you make an authentic, reasonable effort to meet the member's need, if the need is based on an issue covered by the nondiscrimination policy and the various laws and directives. It does not mean you have to give them exactly what they want, if what they want presents an insurmountable business or safety hazard.

How can you reduce unlawful discrimination and sexual harassment in your CAP environment?

- Enforce the "Zero Tolerance" policy.

- Ensure the policy is known and understood.
- Welcome diversity.
- Set the example by your own actions.

4. Identify behavior contrary to CAP's Nondiscrimination policy.

Below is a series of short scenarios which may or may not violate CAP's Nondiscrimination Policy. Which ones have the potential to be violations of CAP's policy?

1. *A Cadet First Class (two-striper) comes to the squadron commander and says the cadet commander won't let him join the drill team. He says he thinks it's because he's too short to fit in with the rest of the team.*
2. *You hear that a female pilot wishes to join a senior squadron. Some members of the unit membership committee want to vote her down because she "wouldn't fit in."*
3. *You are on the awards review committee at the wing. Several members from one squadron have been nominated for a Commander's Commendation for their work at the local air show. You notice that two members who had worked as planners for the event were not nominated for an award.*
4. *A special committee has been formed to select a new squadron commander. The last three commanders have been males, and they have done well. Three members have applied for the position... one female Lt Col, and two Majors. Of the two majors, one is also female. Based upon all criteria used by the review board, the two majors score higher than the female Lt Col, and the male scores higher than everyone. A majority of the board, however, wants to hire the Lt Col because she's the highest ranking; and, they say, "It's time we gave a woman a shot."*

Answers:

1. Likely not discrimination. Height does not meet the criteria of a protected class, unless it's due to a medical condition. Nothing was mentioned about that in this case.
2. This might be discrimination. There are relatively few female pilots. It would be important to ask in what manner the perspective applicant would be an ill fit for the unit.
3. You don't have enough information, the circumstances surrounding the nominations, or the quality of their performance. Nothing in the case study suggests that they are from a protected class or that they were not nominated because they were in a protected class.
4. Tricky question. It is discrimination in that the male was denied a legitimate opportunity for which he was most qualified.

Lesson Summary and Closure

In this lesson, we discussed the history of CAP's nondiscrimination policy, the concepts and terms related to the policy, and the application of the policy. However, this lesson is intended to be more than an antiseptic discussion of rules and policy. It's designed to get you to think more about the decisions you make as a commander CAP and how you interact with your fellow members and potential members; as well as how those actions can translate into how CAP is perceived by its primary customer, the American public.

REFERENCES

The Random House College Dictionary, 1980, Random House Publishing

Air Force Instruction 36-2707, dated 1 MAY 1998 <http://www.e-publishing.af.mil/shared/media/epubs/AFI36-2707.pdf>

Department of Defense Directive 5500.11, *Nondiscrimination in Federally Assisted Programs*, <http://www.dtic.mil/whs/directives/corres/html/550011.htm>

Department of Defense Directive 1020.1, *Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense*, <http://www.dtic.mil/whs/directives/corres/html/102001.htm>

CAPR 1-1

CAPR 20-1

CAPR 36-1

CAPR 36-2

CAPR 39-2

CAPP 50-2